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The right to food

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly a preliminary report on the right to food prepared by Jean Ziegler, Special Rapporteur of the Commission on Human Rights on the right to food, in accordance with Commission on Human Rights resolution 2001/25 of 20 April 2001, as approved by the Economic and Social Council at its substantive session of 2001.

* A/56/150.

** The present report is being submitted on 23 July 2001 so as to include as much up-to-date information as possible.

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Preliminary report of the Special Rapporteur of the Commission on Human Rights on the right to food, Jean Ziegler

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I. Introduction

1. At its fifty-sixth session, the Commission on Human Rights adopted resolution 2000/10 of 17 April 2000, in which it decided, in order to respond fully to the necessity for an integrated and coordinated approach in the promotion and protection of the right to food, to appoint, for a period of three years, a special rapporteur on the right to food. It defined the Special Rapporteur's mandate as follows:

> "(a) To seek, receive and respond to information on all aspects of the realization of the right to food, including the urgent necessity of eradicating hunger;
>
> "(b) To establish cooperation with Governments, intergovernmental organizations, in particular the Food and Agriculture Organization of the United Nations, and non-governmental organizations, on the promotion and effective implementation of the right to food, and to make appropriate recommendations on the realization thereof, taking into consideration the work already done in this field throughout the United Nations system;
>
> "(c) To identify emerging issues related to the right to food worldwide."

2. On 4 September 2000, the Chairperson of the Commission appointed Jean Ziegler (Switzerland) Special Rapporteur. He subsequently submitted his first report to the Commission at its fifty-seventh session.[1]

3. In its resolution 2001/25 of 20 April 2001, the Commission took note with appreciation of the report and commended the Special Rapporteur for his valuable work in the promotion of the right to food; confirmed the mandate of the Special Rapporteur as spelled out in resolution 2000/10 and requested him to pay attention to the issue of drinking water, taking into account the interdependence of that issue and the right to food; encouraged the Special Rapporteur to mainstream a gender perspective in the activities relating to his mandate; and requested him to submit a preliminary report to the General Assembly at its fifty-sixth session and a final report on the implementation of the resolution to the Commission at its fifty-eighth session.

4. The present report is submitted to the General Assembly pursuant to that request. In this report, the Special Rapporteur calls on the Assembly to reiterate the urgency of the elimination of hunger and malnutrition in the world today. In a world richer than ever before, and a world that can already easily produce enough food for the global population, there are still 826 million people who remain chronically and severely undernourished.[2] Many people, especially women and children in developing countries, still suffer from what the Food and Agriculture Organization of the United Nations (FAO) calls "extreme hunger" as they eat less in a day than the minimum quantity necessary for survival. It is an outrage that every year 36 million people die as a direct or indirect result of hunger and nutritional deficiencies, that every seven seconds a child somewhere in the world dies of the direct or indirect effect of hunger.[3]

5. According to FAO, the majority of victims of hunger live in Asia — 515 million, or 24 per cent of the total population of the continent. However, on the basis of the number of victims relative to the size of the population, sub-Saharan Africa is the worst affected: there, 186 million women, men and children, or 34 per cent of the region's population, are permanently and seriously undernourished. The countries worst affected by extreme hunger are mostly in sub-Saharan Africa (18 countries), the Caribbean (Haiti) and Asia (Afghanistan, Bangladesh, the Democratic People's Republic of Korea and Mongolia).[3]

6. It is of course necessary to distinguish between hunger and undernourishment on the one hand and malnutrition on the other.[4] Hunger or undernourishment refer to an insufficient supply or, at worst, a complete lack of calories. Malnutrition, on the other hand, is characterized by the lack or shortage of micronutrients, chiefly vitamins (organic molecules) and minerals (inorganic molecules). Those micronutrients are vital for the functioning of cells and especially of the nervous system. A child may be receiving sufficient calories but if he or she lacks micronutrients, he or she will suffer from stunted growth, infections and other disabilities.[5] What the United Nations Children's Fund (UNICEF) calls "hidden hunger" is undernourishment and/or malnutrition between birth and the age of five, and it has disastrous effects: a child suffering from undernourishment and/or malnutrition in the first years of life will never recover. He or she cannot catch up later and will be disabled for life.[4]

7. The impacts of hunger and malnutrition are extreme: underdevelopment of brain cells, heightened vulnerability to disease, including human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), physical deformities and blindness are only some of the terrible effects,[6] which can also be passed on from generation to generation over the life cycle, as malnourished mothers give birth to babies who are themselves physically and mentally retarded and then pass the problems on to their own children.[7] Every year, tens of millions of seriously undernourished mothers give birth to tens of millions of seriously affected babies: Régis Debray has called those babies "crucified at birth".[8] This leads to a vicious circle of poverty and underdevelopment. The impacts of hunger and malnutrition therefore affect the very possibility of a country to develop.[9]

8. As McGovern writes in his book "The Third Freedom: Ending Hunger in Our Time":[10]

> "Of the world's hungry people, 300 million are school-age children. Not only do they bear the pangs of hunger but also their malnutrition leads to loss of energy, listlessness, and vulnerability to diseases of all kinds. Hungry children cannot function well in school — if, indeed, they are able to attend school at all. Hunger and malnutrition in childhood years can stunt the body and mind for a lifetime. No one can even guess at the vastly larger number of older children and adults who lead damaged lives because of malnutrition in their foetal or infant days."

9. Like solid food, drinking water is also in short supply for hundreds of millions of people in the world. To quote a few statistics: over a billion people in the world are not connected to a modern water supply system; some 2.4 billion people do not have acceptable sanitation arrangements; 4 billion cases of diarrhoea are recorded every year in the world, 2.2 million of which are fatal, mostly in the case of children and babies.[11] This is because the food of children and babies, including dried milk, is mixed with unclean water. It is this interconnectedness between food and water that is the reason for including water as a component of the right to food.

10. Unlike outright famine, chronic malnourishment and malnutrition goes almost unnoticed, yet it affects the daily lives of many millions of people. Little real action is taken in the face of this silent tragedy. In 1974, at the World Food Conference, States committed to eradicating hunger within a decade. That goal was not met. More than 20 years later in 1996, at the World Food Summit, States committed to halving hunger in the world by 2015 and reaffirmed the right to food. Some people are very concerned that that goal will not be met either.[12] It is an outrage that hunger persists in the world today. It is therefore urgent to achieve the right to food through the implementation of national and international legislation.

11. At the fifty-seventh session of the Commission on Human Rights, in 2001, and during the reporting period, the Special Rapporteur maintained a strong working relationship with international organizations and United Nations entities, in particular FAO, the World Food Programme (WFP), the International Labour Organization (ILO), the World Trade Organization (WTO), the United Nations Conference on Trade and Development, the United Nations Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs, the International Monetary Fund (IMF), the World Bank and the International Committee of the Red Cross (ICRC). The Special Rapporteur has also sought to establish relationships with the committees that monitor the implementation of the international treaties, especially the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

12. In addition, the Special Rapporteur benefited from the cooperation of the following non-governmental organizations: Action contre la Faim (ACF, France), FoodFirst Information and Action Network (FIAN, Germany), the World Alliance for Nutrition and Human Rights (Norway), Antenna (Switzerland), the International Project on the Right to Food in Development (University of Oslo, Norway), the International Service for Human Rights (Switzerland) and the International Jacques Maritain Institute (Rome). Moreover, national non-governmental organizations working in the field of human rights sent to the Special Rapporteur reports on specific cases, requesting his intervention; after studying them, the Special Rapporteur decided to submit some of them to the Governments concerned.

13. From 12 to 14 March 2001, the Special Rapporteur participated in Bonn at the Third Expert Consultation on the Right to Food, organized by the Office of the United Nations High Commissioner for

Human Rights and hosted by the Government of Germany, which focused on mechanisms for implementation at country level. The overall objective was to exchange national experiences and to advance the understanding of the operationalization of the right to food, as part of a rights-based development policy. In its resolution 2001/25, the Commission took note with interest of the report of the consultation.[13]

14. The Special Rapporteur has, as a matter of priority, established a working relationship with the Inter-Parliamentary Union (IPU) in order to promote national legislation on the right to food. IPU is a powerful international organization of parliamentarians from over 141 national parliaments around the world who meet regularly to work on questions of international interest, human rights and democracy. In the view of the Special Rapporteur, establishing collaboration with IPU is vital to promote national legislation on the right to food. This will reach members of parliaments in many countries and have a multiplier effect that will have an important impact at the national level. IPU has agreed to collaborate with the Special Rapporteur and will discuss the issue of the right to food at the 106th Inter-Parliamentary Conference, to be held in Ouagadougou from 9 to 14 September 2001 under the auspices of the Committee for Sustainable Development.

II. Definition of the right to food

15. This section first briefly outlines the most important international instruments that provide the legal basis for the right to food. Despite the numerous legal provisions that protect the right to food, there is still very little understanding of what the right to food means. This section therefore aims on to develop the understanding of the right to food and describes the obligations to respect, protect and fulfil that are implied in the commitment to the right to food.

16. The legal basis of the right to food in international human rights law is outlined fully in the first report of the Special Rapporteur.[1] The most important provision is contained in article 11 of the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI), annex), which in its paragraphs 1 and 2 outlines the right to an adequate standard of living, including food, and the fundamental right of everyone to be free from hunger. The right to food is also very closely linked to the right to life, which is protected under article 6 of the International Covenant on Civil and Political Rights (resolution 2200 A (XXI), annex). The right to food of children is also specifically protected under article 24 of the Convention on the Rights of the Child (resolution 44/25, annex).[14]

17. There are also very important rules that protect the right to food in situations of armed conflict under international humanitarian law. International humanitarian law was covered only briefly in the Special Rapporteur's first report, but is covered in much greater detail in the present report in the section on the right to food in armed conflict. The most important elements of international humanitarian law related to the right to food include provisions that prohibit the starvation of civilians as a method of combat, prohibit attacking or destroying objects essential to the survival of the population (e.g. foodstuffs, agricultural areas and drinking water supplies), prohibit forced population displacement (which affects access to land and food) and establish rules on relief and humanitarian assistance (see sect. III below for references).

18. So what does the right to food mean? In general, the right to food embodies the practical idea that all people should have a decent standard of living, especially enough to eat, both in peacetime and in war. Like all the other economic and social rights, the right to food is really about the concern for human dignity that underlies the Universal Declaration on Human Rights. It is also about the fight for President Roosevelt's "Third Freedom", the freedom from want and freedom from hunger.[15]

19. Margaret Thatcher, as Prime Minister of the United Kingdom, liked to preach to members of the Christian church. In a speech entitled "Christianity and Wealth" to members of the Church of Scotland, she proclaimed on 21 May 1988: "If a man will not work, he shall not eat".

20. She was citing an exhortation of the apostle Paul addressing the Thessalonian Christians, in a world very different from the world in which we live today. Thatcher's exhortation means condemning people to hunger in a world where the dominant economic model of capitalism leaves mass unemployment in its wake, in particular in developing countries. According to ILO, 900 million human beings lack decent work or are permanently unemployed. According to ILO, the global

economy is not creating enough jobs and globalization has resulted in an extraordinary growth in inequalities between countries.[16] Nearly a billion people cannot find a job to pay for their food and many others do not earn enough in the jobs that they do have to pay for enough food to feed their families, even if they work all hours of the day and night. The neo-liberal approach of Lady Thatcher is totally inadequate to address the tragedy of hunger.

21. Commitment to the right to food entails obligations on Governments to ensure freedom from hunger for all people at all times. The right to food does not exactly mean that every hungry or malnourished human being is a victim of violations of human rights. Human rights violations only occur when a country's Government fails to meet its obligations to respect, protect or fulfil the right to food. However, government failure to meet those obligations is often the major reason for the persistence of hunger and malnutrition. By committing themselves to the right to food, through ratification of international conventions, Governments commit themselves to respect, protect and fulfil the right to food and this means that they should be accountable to their populations if they violate those obligations to respect, protect or fulfil the right to food.

22. The definition of the right to food used by the Special Rapporteur in paragraph 14 of his first report[1] is as follows:

> "The right to food is the right to have regular, permanent and unobstructed access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free from anxiety."

23. The definition tries to capture the dimension of human suffering that is missing from many formal descriptions of food insecurity: the unbearable, nagging dread that tortures starving persons from the moment they wake up. How, during the day that lies ahead, will they be able to feed their family, provide nourishment for their children and feed themselves? That dread may be even more terrible than the physical suffering and the many aches and diseases that strike an undernourished body.

24. The definition is also careful to include the important elements of the definition of food security, however. It is closely linked to the definition given in the first paragraph of the 1996 World Food Summit Plan of Action:

> "Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life."

It is important to understand that the parameters for food security vary with age and other factors, but there are some internationally recognized standards: at birth, babies need 300 calories a day; between the ages of one and two, 1,000 calories a day; by the age of five, children need 1,600 calories a day. To maintain their strength every day, adults need between 2,000 and 2,700 calories, depending on where they live and what kind of work they do.[17] Understanding food security is therefore vital to understanding the right to food, as it gives us an understanding of the minimum standards that are considered necessary.

25. The definition is even closer to the definition of the right to food used by the Committee on Economic, Social and Cultural Rights. This is the most important international body that is entrusted with monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights. The Committee produced the most comprehensive definition of the right to food in its General Comment No. 12, adopted in May 1999.[18]

26. There are three different levels of obligation — the obligations to respect, protect and fulfil. The General Comment also outlines those three levels of legal obligation of the right to food.[19] The obligation to respect the right to food is effectively a negative obligation, as it entails limits on the exercise of State power that might threaten people's existing access to food. The obligation to protect requires States to take an active role in the regulation of non-State actors, including enterprises or individuals who threaten other people's right to food. The obligation to fulfil is a positive obligation, as this means that the Government must actively seek to identify vulnerable groups and implement policies to improve those people's access to adequate food and ability to feed themselves. As a last resort, direct assistance may also have to be provided where people are unable to access adequate food for

reasons beyond their control. Examples of those obligations are given below.

Obligation to respect

27. The obligation to respect means that the Government should not arbitrarily take away people's right to food or make it difficult for them to gain access to food. Violations of the obligation to respect would occur, for example, if the Government arbitrarily evicted or displaced people from their land, especially if the land was their primary means of feeding themselves, or even if the Government took away social security provisions without making sure that vulnerable people had alternative ways to feed themselves, or if the Government knowingly introduced toxic substances into the food chain, as the right to food entails access to food that is "free from adverse substances". In situations of armed conflict, it would mean that the Government and other armed groups must not destroy productive resources and must not block, delay or divert relief food supplies to civilian populations.

Obligation to protect

28. The obligation to protect means that the Government must pass laws to prevent powerful people or organizations from violating the right to food. The Government must also establish bodies to investigate and provide effective remedies if that right is violated. For example, if the Government does not intervene when a powerful individual evicts people from their land, then the Government violates the obligation to protect the right to food. The Government would also fail to protect the right to food if it took no action if a company polluted a community's water supply. To protect the right to food, the Government might also have to take action if some people were denied access to jobs on the basis of gender, race or other forms of discrimination. It might also have, for example, to introduce laws to protect consumers against harmful food products or against unsustainable means of production. That could include the introduction of labelling on foods or legislation on the use of pesticides.

Obligation to fulfil

29. The obligation to fulfil means that the Government must take positive actions to identify vulnerable groups and to implement policies to ensure access to adequate food by facilitating their ability to feed themselves. That could mean improving employment prospects, by introducing an agrarian reform programme for landless groups or promoting alternative employment opportunities. It could also include, for example, programmes of free milk provision in schools in order to improve child nutrition. The further obligation to provide goes beyond the obligation to facilitate, but only comes into effect when people's food security is threatened for reasons beyond their control. As a last resort, direct assistance may have to be provided, by means of safety nets such as food voucher schemes or social security provisions, to ensure freedom from hunger. The Government would violate that obligation if it let people starve when they were in desperate need and had no way of helping themselves. An appeal by a State for international humanitarian aid, when it is itself unable to guarantee the population's right to food, also comes under this third obligation. States that, through neglect or misplaced national pride, make no such appeal or deliberately delay making it are violating their obligation.

30. In his first report, the Special Rapporteur examined the case of the famine in the Democratic People's Republic of Korea, a famine that killed an estimated 12 to 15 per cent of the total population in the 1990s. He praised the efforts of WFP and non-governmental organizations attempting to bring relief to the people in the Democratic People's Republic of Korea, but noted concerns of some non-governmental organizations that aid was being diverted by the Government. On 21 June 2001, the Executive Director of WFP wrote to the Special Rapporteur to make a clarification on paragraphs 30 and 78 of his first report. According to that letter, WFP and several non-governmental organizations had made massive efforts to gain access to people in need of food. WFP and its partners only worked in regions where they had access to assess needs and monitor the distribution of the food to those in need. The WFP programme in the country was designed specifically to avoid diversions and WFP and its partners applied the same criteria; if access was not obtained, assistance was not provided. However, WFP did note that, despite progress, there was still denial of access and monitoring to certain areas of the Democratic People's Republic of Korea.

31. The Special Rapporteur replied to the Executive Director on 29 June 2001 welcoming the clarification by WFP and the progress that had been made in

negotiating access to certain areas in the Democratic People's Republic of Korea. He noted the consensus statement of 30 March 2001 signed by a number of United Nations entities, donors and non-governmental organizations currently working in the country. According to the statement, more remained to be done in order for operating conditions to be considered satisfactory, especially if programme assistance was to move towards sustainable rehabilitation and development. The Special Rapporteur also stated that the information in his previous report had been based on detailed documentation that only covered the period from 1995 to 2000, not the current situation. The key document, entitled "The dysfunctioning of food aid in North Korea", produced by non-governmental organizations, especially ACF of France, was dated February 2000 and only covered the period from 1995 to 2000. The document explained the motives for the withdrawal of ACF and other non-governmental organizations from the Democratic People's Republic of Korea. At the time of the finalization of his report to the Commission on Human Rights, the Special Rapporteur had had no reason to question that information. He acknowledges, however, the progress that has been made by WFP and its partners in negotiating access to populations in need and welcomes the important work carried out by WFP.

32. Implementation of the right to food, like other economic, social and cultural rights, is qualified to the extent that it must be achieved progressively and to the maximum of available resources. Under paragraph 1 of article 2 of the International Covenant on Economic, Social and Cultural Rights (emphasis added):

> "Each State Party ... undertakes to take steps ... to the **maximum of its available resources** ... [to achieve] **progressively** the full realization of the rights recognized in the present Covenant by all appropriate means ..."

33. That means that a poor country is not expected immediately to ensure the same level of economic, social and cultural benefits that a rich country can afford. However, even the poorest country is bound to ensure the highest level their resources will permit and, at the very least, a basic minimum level of economic, social and cultural rights.[20] The concept of "progressive realization" cannot be used to justify persistent injustice and inequality. It still requires Governments to take steps to continuously improve people's ability to feed themselves and to eliminate hunger. This also implies the "principle of non-regression", which means that Governments must not adopt regressive policies that lead to deterioration in access to food. What Governments can therefore do is to adopt an action plan with concrete goals and fixed time frames and monitor progress over time to measure progressive realization.

34. Finally, under international law, the prohibition of discrimination is not subject to the limitation of progressive realization. The obligation not to discriminate is an immediate duty and discrimination in access to food on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as stated in article 2, paragraph 2, of the International Covenant, cannot be justified under any circumstances, including low levels of resources. The Special Rapporteur believes very strongly in the principle that non-discrimination must be implemented immediately and must not be subjected to progressive realization.

35. The Special Rapporteur also advocates the justiciability of the right to food. What does "justiciability" mean? Essentially, justiciable rights are rights that can be applied in the courts, which means that a judicial remedy for violations of those rights can be sought by the victim. There is a problem with justiciability at the moment, in that, like other economic, social and cultural rights, they are not considered to be justiciable by many authorities, unlike civil and political rights, which are given a much higher status. Even when economic, social and cultural rights are laid down in national constitutions, they are often considered guidelines for Governments, rather than individual rights that are enforceable in the courts. This is because, it is suggested, the judiciary should not have power over policies and resources that are the responsibility of the executive arm of government. However, the Committee on Economic, Social and Cultural Rights has pointed out that courts are already involved in many matters that have important resource implications. It also argues, in paragraph 10 of its General Comment No. 9, that to put economic, social and cultural rights beyond the reach of courts is arbitrary and incompatible with the international principle that those rights are indivisible and interdependent with civil and political rights.

36. A recent workshop held by the Office of the United Nations High Commissioner for Human Rights on justiciability[21] suggested that progress in

justiciability at the national and international levels was being made. New developments mean that the rights in question have been made justiciable in several countries, including Colombia, India and South Africa, and jurisprudence is beginning to evolve. At the international level, new momentum is being created for the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, which would enable the Committee to receive individual communications. The Special Rapporteur believes that the adoption of the draft optional protocol would strengthen the recognition and realization of the right to food and welcomes the decision of the Commission on Human Rights in paragraph 8 (c) of its resolution 2001/30 of 20 April 2001 to appoint an independent expert to examine the question. The Special Rapporteur also believes that, just as is provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46, annex), the Committee on Economic, Social and Cultural Rights must be able receive complaints from any person whose right to food has been denied or otherwise violated.[22]

III. The right to food in armed conflict*

37. This section examines the right to food in situations of armed conflict. The first report of the Special Rapporteur introduced international humanitarian law as an important element in the legal armoury to protect the right to food. The exact provisions of the law are explained below and a number of examples are given to illustrate the ways in which international humanitarian law is being violated around the world today.

38. ICRC, the organization charged with systematically defending and developing international humanitarian law, argues that armed conflict is one of the key reasons for the lack of food and violations of the right to food, yet the international debate on the right to food has made little reference to international humanitarian law.[23] ICRC argues that humanitarian law contains many provisions that relate to the protection of access to food in armed conflict situations and must therefore be seen as an essential component of the legal framework that protects the right to food.

39. During situations of armed conflict, many more people die directly from starvation and malnutrition than from bullets and bombs. Victims are almost inevitably young children, who are extremely susceptible to malnutrition and suffer most as food security is destroyed. Sometimes starvation is used as a political weapon, when crops are destroyed or poisoned and relief supplies are blocked. Sometimes populations are displaced from their homes with the explicit aim of depriving people of resources with which to feed themselves. Very often, vulnerable groups — women, children, prisoners of war, detainees — who have no means to feed themselves are left to starve.

40. ICRC was the first organization to systematically defend and develop the concept of humanitarian law: founded in the aftermath of the Battle of Solferino in 1859, it is today the promoter and guardian of that law. From a theoretical point of view, mention should also be made of the crucial role played by Fyodor Fyodorovich Martens, a philosopher of law and the legal expert of the Government of Russia at the International Peace Conference held in The Hague in 1899, and his assistant, Andre Mandelstam. Their theory was that humanitarian law had its roots in the "consciousness of the world", also called "public consciousness" or, more specifically, "consciousness of identity", as defined by Ludwig Feuerbach, the German philosopher, who wrote:[24]

> "Consciousness in its strictest sense exists only for a being that has as its object its own species and its own essence. To be endowed with consciousness is to be endowed with science (and so with law). Science is the consciousness of species. However, only a being that has as its object its own species, its own essence, is able to take as its object, in their essential meanings, things and beings other than itself."

41. The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, or first Geneva Convention, adopted in 1864 after a proposal made by Henry Dunant, the founder of the Red Cross, was based on the following principle: the life of a wounded man must be saved; he is your adversary but he is also your fellow man, he is like you; prisoners must be given food and water. It is this consciousness of common identity that is the foundation of humanitarian law. This "consciousness of

* This section is based on discussions with and the work of ICRC and in particular on the advice of Jelena Pejic, to whom the Special Rapporteur expresses his appreciation.

the world", which comes from the spontaneous perception of the identity of all beings, requires the protection of others as human beings.[25]

42. International humanitarian law is a set of rules, established by treaty or custom, that are specifically intended to solve humanitarian problems, such as those mentioned above, both in international and non-international armed conflicts. The bulk of contemporary international humanitarian law rules are contained in the four Geneva Conventions of 1949 and in the two Additional Protocols of 1977. International humanitarian law also includes several treaties that prohibit or regulate the use of certain weapons, for example, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction ("the Ottawa Convention"),[26] which bans the use of anti-personnel mines. The Rome Statute of the International Criminal Court, adopted on 17 July 1998,[27] is expected to contribute to the better implementation of international humanitarian law.

43. International humanitarian law is designed to protect people and property and to limit the use of certain methods and means of warfare. Its primary objective is to protect persons not taking or no longer taking part in hostilities, such as civilian populations, the wounded or prisoners of war. Women and children are automatically covered as persons not taking part in the hostilities and are given special protection by the conventions and protocols. In contrast to economic, social and cultural rights, international humanitarian law is not subject to progressive realization, but must always be implemented immediately. It also binds both State and non-State actors and there cannot be any derogation from its rules. A basic principle is that parties to an armed conflict must at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and direct attacks only against military objectives.

44. While international humanitarian law does not mention the right to food as such, many of its provisions are aimed at ensuring that people are not denied access to food during conflict. Some of those rules are preventive in nature, other rules apply to relief and humanitarian assistance once prevention fails and still others provide access to food for specific categories of people. Preventive rules include the prohibition of starvation of civilians as a method of warfare, the prohibition of the destruction of crops, foodstuffs, water and other objects that are essential to the survival of civilian populations and the prohibition of forced displacement.

Starvation of civilians as a method of warfare

45. The starvation of civilians as a method of warfare is prohibited in both international and non-international armed conflict.[28] That prohibition is violated not only when denial of access to food causes death, but also when the population suffers hunger because of deprivation of food sources or supplies. The prohibition of starvation is elaborated upon in provisions prohibiting attacks against or destruction of items necessary for the survival of the civilian population, including foodstuffs and drinking water:[29]

> "Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works."

46. Physical destruction includes the destruction of crops by chemical defoliants or the pollution of water reservoirs. Violations would also occur if landmines were to render agricultural areas useless. Under the Rome Statute of the International Criminal Court, intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival is considered a war crime in international armed conflict.[30] One example of this occurred when, from April 1992 to June 1995, units of the Yugoslav Federal Army and Serb militias besieged the town of Sarajevo, imposing a food blockage and causing thousands of deaths.[31]

Forced displacement

47. The prohibition of forced population displacement also seeks to prevent situations of hunger and starvation during armed conflict. Forced displacement is prohibited under article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which prohibits individual or mass forcible transfers of civilians in situations of occupation, except in cases of necessity for the safety of the population or for

imperative military reasons.[32] In such cases, evacuation must be effected in a way that guarantees satisfactory "nutrition". Similar provisions are made for non-international conflict.[33] Unlawful displacement now constitutes a war crime under the Rome Statute of the International Criminal Court in both international and non-international armed conflict.[34]

Relief and humanitarian assistance to civilian populations

48. Rules on relief and humanitarian assistance to civilian populations in armed conflict situations are also covered under international humanitarian law, though they are different for international and non-international armed conflicts. For international armed conflicts, article 30 of the fourth Geneva Convention grants protected persons the right to contact humanitarian organizations for relief. Under the Convention, Governments are obliged to allow free passage of certain goods for specific categories of people, even if those people belong to the adversary State. The rule was designed to deal primarily with humanitarian assistance in blockade situations and requires free passage of essential foodstuffs for children and pregnant women, although stringent conditions are attached (art. 23). This was extended under the first Additional Protocol, article 70, paragraph 1, of which covers relief for any civilian population lacking adequate supplies, including food, as long as relief actions are humanitarian and impartial. This is subject to the agreement of the State, but that agreement is expected and a State cannot refuse aid except for exceptional reasons. There are also a series of provisions that relate to relief assistance to civilians in occupied territories, under the fourth Geneva Convention (arts. 55 and 59, para. 1) and the first Additional Protocol (arts. 68, 69 and 71). The "occupying Power" has the duty to ensure food for the population and must bring necessary foodstuffs, or allow relief, if the resources of the occupied territory are inadequate. Impeding relief supplies is a war crime under the Rome Statute of the International Criminal Court (art. 8, para. 2 (b) (xxv)).

49. In terms of non-international armed conflict, common article 3 of the four Geneva Conventions covers the right of civilian populations in non-international conflicts to be treated humanely (which denial of food would violate) and to receive humanitarian aid. The second Additional Protocol extends those protections with more detailed provisions (arts. 1, 2, 14 and 18, paras. 1 and 2).

Rules for specific categories of person

50. Numerous rules for specific categories of person are also provided for under international humanitarian law and ensure that those who cannot feed themselves are adequately supplied with food and have the right to relief. Categories include prisoners of war, civilian internees and detainees. Special provisions also exist for women and children.

51. There are many examples of violations of those provisions in too many countries in the world today. The Special Rapporteur has already received allegations of violations in a number of countries, including Afghanistan and Myanmar and the Occupied Palestinian Territory.

52. The Special Rapporteur has received allegations of violations in Afghanistan of the right to food and key provisions of humanitarian law. Those allegations include the widespread destruction in civilian areas, where civilians have been subjected to indiscriminate attacks and forced displacement. The Special Rapporteur hopes to be able to carry out a country mission to Afghanistan to examine the allegations and assess the overall food situation.

53. Allegations received by the Special Rapporteur in relation to Myanmar document gross violations of the right to food by the Government. Such allegations have concerned the use of food as a political weapon and method of warfare against insurgents and civilian populations. It is alleged that mass forced displacement and forced relocation of people has threatened food security. For example, according to information received from non-governmental organizations, since March 1996 the military has allegedly relocated by force more than 300,000 people from over 1,400 villages covering an area of over 7,000 square miles, who have been ordered at gunpoint to move into strategic relocation sites. Reported malnutrition rates are extremely high in both war-affected areas of eastern Myanmar and peaceful areas, in particular the Karen, Karenni and Shan states, as well as the Delta region. Other alleged violations of humanitarian law included the deliberate destruction by government armed forces of staple crops and confiscation of food from civilians.

54. The Special Rapporteur has also received, in a joint submission from Palestinian, Israeli and international non-governmental organizations, allegations with respect to the Occupied Palestinian Territory. It is alleged that the escalation in closure and siege policies imposed by Israeli political leaders and occupying military authorities since September 2000 have prevented or impeded access to food and water. Those policies are alleged to have resulted in the direct denial of access to food and water for communities that have been besieged and cordoned off, especially under specific cases of severe or total closures — referred to as "curfews" — trapping people in their villages and impeding movement. The closures are keeping people away from their jobs and mean that farmers are unable to reach their remote fields or markets. The policies are also alleged to be strangling the Palestinian economy and the purchasing power of the people to buy food and water. There have also been instances of deliberate destruction of objects belonging to the civilian population. It is alleged, for example, that in April 2001 the Israeli military destroyed 2,000 dunams of land, together with destruction of fruit trees and water wells that were the source of livelihood for 135 families.

55. Several non-governmental organizations allege that the Israeli Government's policies have created hunger and threaten starvation of the most destitute, and have documented long-term or permanent damage to the nutritional needs of especially vulnerable groups, especially children and refugees. They corroborate the devastating impacts reported by the Office of the United Nations Special Coordinator in the Occupied Territories in a report published in March 2001 on the impact on the Palestinian economy of confrontations, mobility restrictions and border closures: 1 October 2000-31 January 2001. The allegations suggest that those policies constitute a violation of the right to food under humanitarian law, as well as under human rights law. The allegations also suggest that the closures constitute a collective punishment and a violation of the provision that food should not be used as an instrument of political or economic pressure as reiterated in the 1996 Rome Declaration on World Food Security and numerous resolutions of the Commission on Human Rights. The Special Rapporteur has requested the Israeli authorities to issue him a visa so that he may carry out a country mission to examine those allegations which are directly related to his mandate.

56. With regard to the principle that food should not be used as an instrument of political and economic pressure, the case of Iraq is important. There can be little doubt that subjecting the Iraqi people to a harsh economic embargo since 1991 has placed the United Nations in a clear violation of the obligation to respect the right to food of people in Iraq. This is the opinion of, among others, Denis Halliday, a former Assistant Secretary-General of the United Nations and former Humanitarian Coordinator for Iraq,[35] and of Marc Bossuyt, in his working paper on the adverse consequences of economic sanctions on the enjoyment of human rights, submitted to the Subcommission on the Promotion and Protection of Human Rights in 2000.[36]

57. The Special Rapporteur's attention has also been drawn to the specific situation of the long-standing bilateral blockade against Cuba by the United States of America. There can be little doubt that the blockade against Cuba has seriously damaging effects on the Cuban economy. The Special Rapporteur is awaiting submission of detailed information and allegations before considering the full implications of that situation with respect to the right to food.

IV. Drinking water and the right to food

58. In this section, attention is limited to the aspects of water that are directly related to the right to food. In its resolution 2001/25, the Commission on Human Rights extended the mandate of the Special Rapporteur to include drinking water as an essential element of the right to food and requested the Special Rapporteur to pay attention to the issue of drinking water, taking into account the interdependence of that issue and the right to food. This means that the Special Rapporteur's attention will be concentrated primarily on the nutritional aspects of drinking water, although reference is also made to the agricultural aspects of access to irrigation water, which is clearly linked to the viability of food production and the capacity of people to feed themselves.

59. Like food, water is vital for life. Clean drinking water is an essential part of healthy nutrition. Both the quality, as well as the quantity, of water available are fundamental. People cannot live without a minimum quantity of water, nor can they live if the water they

have access to is of poor quality and carries many diseases. Of the 4 billion cases of diarrhoea recorded every year in the world, 2.2 million are fatal, resulting in death mostly in the case of children and babies. This is often because the food of children and babies, including dried milk, is mixed with unclean water. And diarrhoea is only one of the many diseases borne in poor-quality water: others include trachoma, bilharzia, cholera, typhoid fever, dysentery, hepatitis and malaria. Many of the diseases carried by poor drinking water result from the presence of pathogenic organisms (bacteria, viruses and worms). WHO estimates that in developing countries up to 80 per cent of diseases and more than one third of deaths are caused by the use of contaminated water as drinking water or for mixing food. The 1996 WHO World Health Report argues that water-borne diseases are one of the major challenges to survival in the poorest countries. Every day, small children die from easily preventable diseases.

60. The 1996 World Health Report indicates that more than one fifth of the world population still do not have access to safe and affordable drinking water and half the world's people do not have access to sanitation. There are around 285 million people without access to drinking water in sub-Saharan Africa, 248 million in southern Asia, 398 million in eastern Asia, 180 million in South-East Asia and the Pacific, 92 million in Latin America and the Caribbean and 67 million in Arab countries, according to the UNDP 1999 World Development Report. The lack of water affects people in both rural and urban areas. In some of the biggest cities in the world, 30 to 40 per cent of the population lack access to drinking water, including Buenos Aires, Cairo, Casablanca (Morocco), Delhi, Hanoi, Jakarta, Karachi, Manila, Mexico, Rio de Janeiro (Brazil), Seoul and Shanghai (China).[37] In rural areas, UNDP reports that the figure reaches up to 80 per cent of people in developing countries.

61. There is a widely unequal distribution of water in the world between countries, for both natural and man-made reasons. Over 60 per cent of water resources are situated in nine countries (including Brazil, Canada, China, Indonesia, the Russian Federation and the United States), while another 80 countries, representing 40 per cent of world population, are faced with a water shortage. The world regions most affected by this problem are all the countries of the Arabian peninsula, the countries of the southern shore of the Mediterranean and a number of countries in eastern and southern Africa. Their inhabitants are already living in a situation of chronic water shortage. The threshold of drinking water shortage has been defined as 1,000 cubic metres (m^3) per year per person. Below 500 m^3, the situation becomes critical and between 100 and 200 m^3, the situation is considered a severe water shortage.[38] There is also a considerable inequality in consumption of water between developed and developing countries and over-consumption by the wealthy mirrors the under-consumption of the poor.

62. In the modern world, the water supply per person is one third lower than its level 25 years ago, in part as a result of population growth, but also because of great wastage of water, over-consumption and over-exploitation by industry and agriculture. Since 1970, the quantity of freshwater available per person has been reduced by 40 per cent, dropping to 7,600 m^3, and in 24 countries it is now situated below 100 m^3, which is considered a most severe water shortage, while the consumption of water per person has been multiplied by six since the beginning of the twentieth century.[39] This is what the Vice-President of the World Bank, Ismail Serageldin, calls "the water bomb".[40]

63. However, it is the poorest who suffer most from the lack of water. Access to clean drinking water within countries is extremely unequal. In the case of South Africa, for example, inequities still exist and it has been argued that 600,000 white farmers consume 60 per cent of the country's water resources for irrigation, while 15 million members of the black population still do not have any direct access to drinking water.[41] While irrigation water is clearly important, it is fundamental to set priorities to meet drinking water needs as a first condition, as well as focusing on fair distribution. Other statistics suggest that, in India, some poor households pay 25 per cent of their income on water and poor residents in Lima, who do not have municipal water supplies, pay private vendors as much as $3 per cubic metre for buckets of often contaminated water, whereas the more affluent pay 30 cents per cubic metre for treated municipal tap water.[42]

64. Non-governmental organizations and others have raised concerns that the access to water of the poorest populations is being threatened by an increasing move to privatize water supply systems.[43] They claim that this will not solve the problem of water scarcity, but will simply allow large corporations to charge monopoly profits for the price of water. The economist Ricardo Petrella writes:[44] "In these conditions, water,

the source of life, can gradually become one of the main 'sources of profit' and one of the last spheres of capital accumulation."

65. In some extreme cases, privatization removes the right of people to collect water as rainfall on their own roofs. In the case of Bolivia, for example, it is alleged that the Government, under pressure from the World Bank, sold off the public water to one private company.[45] The company immediately announced the doubling of water prices, which for many Bolivians meant that water cost more than food. According to Maude Barlow,[45] the World Bank also favoured absolute monopolies to private water concessionaires, which meant that all water, even from community wells, required permits to access and peasants and small farmers even had to buy permits to collect rainwater on their own property. Public outcry led to civil unrest and the Government declared martial law to control the protests, but eventually it revoked the water privatization legislation.

66. Several other studies have shown that the urban poor tend to pay higher prices than those who are better off and always spend proportionally more of their income on water. In 1997, the water services of Manila were transferred from the public sector to two groups of private firms. According to Petrella,[46] the poor subsidize the water of the rich: one group sells water in Manila-East, the wealthiest part of the city, at a price that is less than half the price at which water is sold in parts of the city where the poor population is concentrated. In Port-au-Prince, the poorest households can spend 20 per cent of their income on water. In Onitscha, Nigeria, given income inequalities, the poor pay 18 per cent of their income on water, while upper income households only spend 2 per cent of their higher incomes on water.[47]

67. The Special Rapporteur advocates the strong protection of water as a public good and points to the model of water management in the canton of Geneva. Under the law of that canton, water has belonged to the municipality since the nineteenth century. A public government enterprise, the Services industriels, is mandated to distribute the water to people's homes and is obliged by law to distribute water to every inhabitant and to ensure that the water is clean. The enterprise cannot charge for water since water is considered a public good, but it is allowed to charge service, that is the provision of the infrastructure and the water treatment.

68. Clearly, in countries that lack water and tend to experience drought, access to water becomes a far more complicated issue and the Special Rapporteur plans to examine that issue in a later report. The Special Rapporteur is also planning a country mission to the Niger, where he will examine the issue of drought and desertification in the region as part of his study on the right to food. The Niger has suffered from recurrent droughts over the past few years and desertification has advanced. Production in the agro-pastoral sector contributes over 40 per cent of the gross national product (GNP) of the country, but the agro-pastoral zones have reportedly been reduced by half by the process of desertification. The country does have extensive water resources, but they are managed inadequately, in particular because of the difficulties in extracting groundwater (less than 20 per cent of groundwater resources are currently used) and the lack of appropriate hydraulic infrastructure. Over 48 per cent of the rural population lack access to sufficient water and water is increasingly viewed as a potential source of social and political conflict in the Niger.[48]

69. At the very least, issues of social justice must be addressed to ensure that access to water is improved for the very poorest. This can include measures such as improved access to groundwater and better management of other water sources. In the Niger, for example, the groundwater is at a depth where traditional methods and financial means of the local community are insufficient to be able to bore a well. In such cases, the international community could give assistance to purchase the necessary technologies; much can also be done with simple and low-cost technologies. In the case of irrigation water, the Special Rapporteur agrees with the position of the International Fund for Agricultural Development (IFAD) in its 2001 Rural Poverty Report that small-scale, farmer-managed irrigation schemes are often the best way of providing the very poor with access to water for irrigation.

70. Setting benchmarks for water quality for health and for access to water is also important. As one example, although access to water in South Africa still reflects inequities, the country has set standards to monitor progressive change. The South African Water Department has introduced legislation that provides a framework for equitable and sustainable use, management and conservation of water resources. A guide, developed in conjunction with the Health Department, sets benchmarks for minimum health-

related standards for assessment of water quality. It also sets benchmarks in terms of people's entitlements, quantifying the minimum water supply at 25 litres per person per day, available within 200 metres of the dwelling, with a flow rate from the outlet of not less than 10 litres per minute, and the water supply providing water security for the community.[49] Setting such standards is a first step towards progressive change.

71. The Special Rapporteur believes that everyone must have access to drinking water on equal terms and that irrigation water should also be accessible for poor peasants who depend on their land to feed themselves. As a component of the right to food, access to safe, clean drinking water and basic irrigation water must be protected under the obligations to respect, protect and fulfil the right to food and through international cooperation. This should include several elements, including reducing inequality of access to water at the national and international levels, taking into account the particular problems of countries suffering from severe water shortages. Raising public awareness at the national and international levels to promote the conservation of water, to limit over-consumption and to reduce losses, leaks, pollution and waste of water is also fundamental. Ensuring better purification and storage and setting benchmarks for water quality would reduce the risk of disease and contribute immeasurably to the nutritional aspects of water as a component of the right to food.

V. International trade and the right to food

72. This section focuses on understanding why so many non-governmental organizations argue that international trade rules are disastrous for food security. It examines international trade liberalization and the trade rules governing agriculture to understand how they affect the food security of the poorest. It then describes some proposals in the current new round of WTO negotiations on agriculture. In particular, attention is focused on the proposal of Norway that agriculture is a special case and food security should be considered a public good, as well as the proposal of a number of developing countries for concrete measures to protect their food security.

73. Many non-governmental organizations argue that international trade liberalization and globalization have been disastrous for food security and the right to food. They argue that the liberalization of agriculture, which has occurred mainly in developing countries (largely under programmes of structural adjustment rather than under WTO provisions), has produced increased hunger and malnutrition rather than safer food security. As Kevin Watkins of OXFAM wrote in the British newspaper *The Guardian* in November 1996 at the time of the World Food Summit:[50] "Free trade will never feed the world, on the contrary."

74. A recent report entitled "Trade and Hunger"[51] claims that food security based on international trade is "more mirage than fact" for the poorest in developing countries, on the basis of 27 case studies in different countries. The report argues that much of the agricultural trade liberalization in developing countries over the past 20 years has been based on the hope that agricultural production in developing countries would switch to high-value export crops, which would enable them to import food. However, this has not happened in many countries, which have struggled to find viable export crops, as commodity prices have fallen and they have laboured to find the funds to meet their food import needs. International trade does not automatically help countries to meet food shortages if they do not have foreign exchange to buy food imports.[52] Nor does it help when their farmers have to compete with cheap subsidized imports. Both producers and consumers suffer when liberalization allows unscrupulous traders and private monopolies to pay low prices to farmers and charge high prices to consumers.[53] The switch to export crops has also shifted government attention away from small-scale farm agriculture focused on food security. In Uganda, for example, the shift away from local food crops meant that people had less to eat.[51] In the case of Zambia, even IMF has recognized that liberalization and adjustment reduced food consumption[54] or, in other words, left people struggling to find enough food to eat. It is those impacts on the daily lives of people that are left out of the picture of macroeconomic reform and protests are often silenced by violent repression.

75. In Brazil, the switch towards export-orientated agriculture has meant that Brazil is now a major food exporter among the world's top 10 economies. Yet 32 million Brazilians still suffer from terrible poverty and malnutrition. It is argued that this is the result of

widespread inequality and the concentration in ownership of land.[55] The Special Rapporteur has received information about the landless rural worker's movement, Movimento dos Trabalhadores Rurais Sem Terra (MST), which campaigns for land rights and the right to food through legal occupation of land designated as unproductive, as sanctioned by the Brazilian Constitution. A report, written by the Catholic Church Pastoral Land Commission and cited by a 2000 United States State Department report on human rights in Brazil,[56] alleges that 47 landless MST activists were killed in 1998 and 30 in 1997 and 35 cases of torture of activists were also recorded in 1998. The report argues that the climate of impunity enjoyed by landed interests as a result of the fragile justice system and the collusion of local political interests continues to encourage serious human rights abuses of landless activists. The Special Rapporteur is in the process of applying to the Brazilian authorities to carry out a country mission to Brazil so that he can assess the overall situation at first hand.

76. It is clear that food self-sufficiency or food exports at the national level do not necessarily imply food security at the household level, in particular in developing countries, unless most of the farming is undertaken by small-scale farmers. The FAO State of Food and Agriculture Report 2000 argues that local production by small-scale farmers is the best way of ensuring food security at the household level in developing countries, because it both increases food availability and provides income and employment. Small-scale farming may be the only livelihood in many developing countries where there are few alternative forms of employment. It has also been argued that small farms are not backward, unproductive and inefficient, but can be more productive and more efficient and contribute more to economic development than large-scale industrialized agriculture.[57] Trade liberalization of agriculture across the world is resulting in an increasing concentration of agricultural production, however, benefiting large-scale farming and transnational corporations.[51] This is especially true for developing countries, but is also affecting family farms in developed countries as liberalization pushes their agriculture towards industrialization (including increasing use of biotechnology) and concentration (including corporate control of the food chain). Concentration moves production away from the site of consumption and away from local food security.

77. Although food aid is imperative to protect the right to food in situations of armed conflict and other disasters, it can act as a disincentive to produce in countries where production is still possible, thereby affecting the right of people to feed themselves. It is necessary to ensure that food aid policy does not disrupt local production and relates directly to the priorities of countries in need rather than to the needs of donor countries to remove their domestic surpluses.

78. Like all human rights, the right to food is based on the responsibility of government to protect its people. The right to food envisages that the State will pass laws to make sure that the right to food is respected, protected and fulfilled, yet liberalization reduces the autonomy of the State to act. When the law is just, it can protect the weak. As Jean-Jacques Rousseau wrote: "Between the strong and the weak, it is liberty that oppresses and the law that liberates."

79. Developed countries still tend to have more autonomy to control their local food security compared with developing countries. Developed countries have been slower to liberalize agriculture, despite provisions made under the WTO Agreement on Agriculture to create a level playing field in the agricultural trading system in terms of market access, export subsidies and domestic support.[58] Agriculture has continued to be protected and supported in many developed economies, while developing countries have had to liberalize under structural adjustment programmes (removing all subsidy support as well as drastically reducing import barriers to food imports well beyond what is formally required under WTO liberalization).[59] This has created an unlevel playing field in which subsidies of developed countries act as a disincentive to agricultural production in developing countries.[60] In addition, under the WTO rules, it is almost impossible to reverse liberalization measures, even if they have had a disastrous impact on local-level food security.

80. Civil society organizations have called for WTO to recognize the primacy of human rights law over international trade law in the next round of trade negotiations.[61] Those non-governmental organizations claim that WTO agreements have had a negative effect on human rights. The Agreement on Agriculture has been blamed for terrible impacts on the livelihoods and food security of peasant farmers in developing countries, as those countries have been forced to liberalize and open up their markets without significant reciprocal liberalization of the developed countries in

terms of market access, export subsidies or domestic supports. The Agreement on Trade-Related Aspects of Intellectual Property Rights has also been widely criticized. In particular, concerns have been expressed that the Agreement could be implemented in a way that limits the access of peasant farmers to seed for replanting. The Agreement also has been criticized for not actively protecting the cultural heritage and indigenous knowledge from patenting by external interests.[61] Non-governmental organizations have also raised recent concerns that access to water will be negatively affected if water (the provision of drinking water) is included under the General Agreement on Trade in Services, although WTO disputes this in its article entitled "The WTO is not after your water!".[62]

81. It is interesting to read some of the emerging proposals being suggested for the new round of WTO negotiations on agriculture, especially the proposal of Norway that food security should be considered a public good, and the proposal of a number of developing countries for concrete measures to protect their food security through a "development/food security" box in the Agreement on Agriculture. The issue is extremely complex, because food security is important to all countries, but it is the developing countries who face the greatest challenge, as it is in those countries that food security remains a daily struggle for many families.

82. The proposal of Norway submitted for the new round calls for WTO commitments that do not conflict with States' obligations to respect the right to food. The proposal argues (emphasis added):[63]

> "The WTO policy reform must be undertaken in ways consistent with other relevant multilateral commitments, such as the Convention on Biological Diversity and commitments relating to **the right to food**. Since the Universal Declaration of Human Rights was adopted by the United Nations in 1948, a number of international legal instruments and recommendations relating to nutritional concerns and the right to food have been developed, recognizing the fundamental right of everyone to be free from hunger and emphasizing the responsibility of the State in this respect."

83. The proposal also argues that food security is a "public good". They suggest that the public good nature of agriculture demands that some levels of subsidy are needed to support local domestic production, but argue for tighter disciplines on export-oriented production. This is a concrete suggestion to ensure that subsidies are not used to subsidize the export sector (to avoid acting as a disincentive to the production of other countries):[64]

> "NTCs (non-trade concerns) often have public goods characteristics. While private goods can be exchanged in a market, NTCs often have public goods characteristics for which, by definition, functioning markets are lacking. Furthermore, the scope for market creation seems to be limited. While market creation is possible in certain cases, government intervention may be justified in order to correct the under-provisioning of NTCs with public good characteristics and to internalize externalities.
>
> "Contrary to most private goods for which international markets exist, NTCs, in general, cannot be ensured through trade, but need to be provided by domestic agricultural production. To some extent food security represents an exception, as both domestic production and a predictable and stable trading system contribute to increased food security. The domestic safeguarding of NTCs varies substantially from country to country, as well as within countries, depending on national priorities (i.e. demand side variations) and the cost levels that each country's agricultural sector is facing (i.e. supply side variations)."

84. The "public good" nature of food security is used to justify a minimum of domestic agricultural production in Norway for partial self-sufficiency (50 per cent) alongside trade. In the case of developing countries, however, the "public good" nature of food security may be very different. If the capacity of a whole country to develop is severely restrained as millions of mothers give birth to millions of babies who are physically and mentally retarded, so that improving nutrition and reducing undernourishment could help lift a whole country out of poverty — is that not also a "public good"?

85. A number of developing countries, namely, Cuba, Dominican Republic, El Salvador, Haiti, Honduras, Kenya, Nicaragua, Pakistan, Sri Lanka, Uganda and Zimbabwe, have submitted a proposal calling for a "food security box", which recognizes the specific food

security needs and special situations of developing countries, although it does not mention the right to food.[65] The proposal calls for exemptions under the "box" that would give developing countries greater policy autonomy to protect the production of basic food staples. They argue that food security is fundamental for national security and propose a "development box" based on the following basic objectives and policy instruments that aim to achieve them:

(a) To protect and enhance developing countries' domestic food production capacity, in particular in key staples;

(b) To increase food security and food accessibility for all, especially the poorest;

(c) To provide or at least sustain existing employment for the rural poor;

(d) To protect farmers who are already producing an adequate supply of key agricultural products from the onslaught of cheap imports;

(e) To ensure flexibility to provide the necessary supports to small farmers, especially in terms of increasing their production capacity and competitiveness;

(f) To stop the dumping of cheap subsidized imports on developing countries.

86. Non-governmental organizations have further suggested that "food security crops" should be defined as crops that are either staple foods in the country concerned or are the main sources of livelihood for poor farmers.[66] Of course, there are still problems, if developing countries cannot afford to support local production of small farmers and if developed country protection continues to limit market access opportunities. However, the proposal does make some concrete suggestions for steps towards changing the WTO Agreement on Agriculture so that it meets the food security needs of the developing countries and evens out the unlevel playing field that currently exists. It makes the following technical suggestions that instruments should be included that allow:[65]

(a) *Choice of which products to liberalize.* All developing countries should be able to use a positive list approach to declare which agricultural products or sectors they would like disciplined under the provisions of the Agreement on Agriculture. That is, only the products that are declared by a country are subject to the commitments of the Agreement;

(b) *Re-evaluation of tariffs.* Allow developing countries to re-evaluate and adjust their tariff levels. Where it has been established that cheap imports are destroying or threatening domestic producers, developing countries should be allowed to raise their tariff boundaries on key products to protect food security. Furthermore, the countries of the Organisation for Economic Cooperation and Development that continue to have very high tariff peaks and escalations should drastically reduce those tariff levels, especially for products of interest to developing countries;

(c) *Flexibility in levels of domestic subsidies.* Developing countries should be allowed an additional 10 per cent on their *de minimis* support level, that is, bringing the level from 10 to 20 per cent;

(d) *Protection against dumping.* Dumping in any form must be prohibited. All forms of export subsidies (direct or indirect) by developed countries must be eliminated immediately;

(e) *Protection against monopolies.* Competition policy in agriculture must be addressed in the review. Developing countries must be given an easily accessible mechanism to protect themselves against the abuse of monopoly power and to seek compensation.

87. The Special Rapporteur believes that the new WTO negotiations must take into account these suggestions of the developing countries and must consider the need to protect the right to food. The Special Rapporteur believes that all economic policy changes must not endanger life through malnutrition, but guarantee at least a basic minimum that respects the right to food and the right to life. More attention must be paid to understanding that trade liberalization in itself does not automatically bring growth.[67] More attention must also be paid to the World Bank's new understanding that economic growth does not necessarily benefit the poor, just as growth in itself does nothing to reduce pre-existing inequality.[68] Food security is best protected through small-scale farming and the Special Rapporteur advocates the principles of local food security, which are further elaborated upon in the last section.

VI. Concrete steps for national legislation

88. As many have pointed out throughout history, no society can survive for long if the strong do not protect the rights of the weak. On a wall in Geneva in front of the Office of the United Nations High Commissioner of Human Rights, a plaque commemorates a verse by Alfonse de Lamartine in his *Méditations poétiques* of 1841: "The freedom of the weak is the glory of the powerful."[69]

89. In this section, concrete steps are proposed for a way forward in implementing national legislation on the right to food. Governments that are party to the international instruments that protect the right to food are required to implement legislation at the national level. Twenty countries in the world have constitutions that more or less explicitly and in more or less detail, refer to the right to food or a related norm.[70] One of the most explicit norms is that contained in the South African Constitution, which stipulates in its section 27: "Everyone has the right to have access to ... sufficient food and water." However, no State has yet passed consistent domestic laws ensuring effective protection of the right to food for its population.

90. The Special Rapporteur advocates the adoption of national legislation on the right to food, to ensure better protection for that right at the national level. FAO has rightfully prioritized the conceptual development of the right to food viewing national legislation as fundamental and recognizing that there is an urgent need to research the principles and content of a framework law on the right to food.[71]

91. All States parties to the international instruments, including the International Covenant on Economic, Social and Cultural Rights, have committed themselves to adopt legislative measures and to take appropriate steps to ensure the realization of that right. Although many States will also have specific legislation on some areas that are relevant to the right to food, they are not brought together under a holistic framework that prioritizes the right to food under some form of framework law. As the Committee on Economic, Social and Cultural Rights suggests in its General Comment No. 12:

> "States should consider the adoption of a *framework law* as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations."

92. There is a misconception that "framework law" is meant in the sense of a standard "model law", but this is not the case. Clearly economic, social, cultural and hence nutritional situations tend to be extremely varied from one country to another and a model law would fail to address the problems experienced by people in their everyday lives and produce legislative solutions ill-adapted to legal and political systems in different countries. It would also be impossible for a model law to include all the measures necessary to establish the effectiveness of the right to food, from agrarian rights to workers rights and to the protection of the consumer and non-discrimination.

93. A framework law would have a much more limited and specific objective. As the non-governmental organization FIAN has argued,[72] this could be an overarching framework that articulates the right to food as a national priority and provides a point of departure to begin the harmonization and revision of diverse laws and sectoral policies so that they all comply with obligations under the right to food. FIAN suggests that such a framework law should reaffirm the commitment of the State to the right to food, outline the normative content of the right to food and the obligations of the State to respect, protect and fulfil the right to food and establish the responsibility of the State to implement and realize progressively the right to food through national legislation. This would need to allow for creating new laws where there are gaps, revising existing laws and policies that conflict with or contradict the fulfilment of the right to food, improving the enforcement of existing law and introducing procedures that establish the justiciability of the right to food.

94. A framework law would therefore not be a model, but rather provide an integrated legal framework, under which all specific legislation and government policies related to the right to food, including agriculture, nutrition, land and water, must flow and be coherent. It would be based on General Comment No. 12 and take into account the International Code of Conduct on the Human Right to Adequate Food.[73] Establishing the basic elements to ensure the state obligations to respect, protect and fulfil the right to food would have to result from a clear analysis of the problems in a specific country. As the Special Rapporteur has suggested, it would be necessary to work to identify obstacles that prevent the full realization of the right to food.[74] In a predominately rural country, the main obstacle might be its system of unequal land rights; in another case, it might be the very low income of part of the population (which might be remedied by redistributive taxation and land reform) and so on. The framework legislation could include some basic elements, but these would then be elaborated upon through further new national legislation or revision of existing legislation that would provide the framework for initiatives such as local strategies and policies on local food security.

95. The valuable work of the non-governmental organization FIAN suggests that, despite the differences between countries, some key gaps and inconsistencies between national legislation can be identified that are relatively similar across countries. FIAN suggests that a framework law could consider the following basic elements for the progressive implementation of the right to food:[72]

(a) *Obligation to respect.* This should include the prohibition of forced eviction of vulnerable groups from their bases of subsistence; mechanisms for compensation and indemnization in cases of forced eviction already effected; and the revision of all forms of discrimination inherent in legislative and budgetary measures;

(b) *Obligation to protect.* This should include mechanisms for protection when third parties evict a vulnerable group from their bases of subsistence and mechanisms of punishment and compensation in evictions already effected; the guarantee of security of land tenure and other productive resources; effective regulation of workers' rights; the guarantee of non-discrimination against women, in the area of work as well as in relation to ownership of property and productive resources; and the guarantee of traditional rights of indigenous communities in relation to their natural resources;

(c) *Obligation to fulfil.* This should include identification of vulnerable groups and causes of their vulnerability; ensuring the application of legislation for minimum salary that should cover the basic food basket; ensuring the application of legislation that guarantees the maximum use of available resources to improve the access to productive resources (e.g. through agrarian reform) of social groups affected by malnutrition; ensuring the application of legislation that guarantees a minimum income for the social groups affected by malnutrition; and ensuring the application of legislation that guarantees food aid or other support in emergency situations to groups threatened by malnutrition;

(d) *Concrete steps to be taken.* Recognition of the criteria of progressive realization in the implementation of the right to food in the legislation; and establishment of concrete steps to achieve consistency in national legislation with the requirements of the obligations of the right to food and achieving progress over time.

96. The element of progressive implementation would need to be incorporated into this framework. Other elements would also have to be added to cover nutrition, food safety, water and the many other food-related aspects mentioned in the present report. These should all be covered under the framework law on the right to food to ensure holistic treatment. Specific, more detailed legislative solutions could then be designed, under the framework of that law, to ensure the obligations of the State to respect, protect and fulfil the right to food. This could include legislative action on the separate areas, including land tenure, agricultural policy, access to water, access to credit, employment and safety nets, environmental policy, training in nutrition and regulations on food production, quality and safety.

97. In terms of the implementation and realization of the right to economic, social and cultural rights, including the right to food, the example of South Africa is an exceptional one because of three elements: there is a strong commitment to the right to food in the South African Constitution and Bill of Rights, all economic and social rights are understood to be justiciable under South African law and a monitoring

mechanism has been put in place that ensures the implementation and progressive realization of those rights.

98. The South African Bill of Rights, which is incorporated into the 1996 Constitution, explicitly provides (sect. 27, para. 1 (b)) that every person in South Africa has the right to have access to sufficient food and water, subject to progressive realization. There is also a direct obligation on the State to ensure that every child, and every detained person, has the right to adequate food, and this is not subject to progressive realization, as children and detainees are considered to be unable to feed themselves (sects. 28, para. 1 (c), and 35, para. 29).

99. There are also many other related rights, including the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance (sect. 27, para. 1 (c)). Section 25 also regulates ownership, tenure and access to land, which is the basic means of production of food. It states that no law may permit arbitrary deprivation of property and the State must take reasonable legislative and other measures, within its available resources, to foster conditions that enable people to gain access to land on an equitable basis. The right to equality and the prohibition of unfair discrimination is also relevant as it protects the right of equal access to food, in particular for disadvantaged and vulnerable groups.[75] The Constitution requires (sect. 7, para. 2) the State to respect, protect and fulfil the realization of all the rights in the Bill of Rights, including socio-economic rights.

100. The right to have access to food and water is, like other economic, social and cultural rights contained in the Bill of Rights, recognized as justiciable under South African law, which means that, as with civil and political rights, cases can be taken to court and a court can review steps taken to realize economic, social and cultural rights. Therefore the judicial system becomes one mechanism for ensuring the implementation of economic, social and cultural rights. A recent case before the South African Constitutional Court, the Grootboom case, has set an extremely important precedent in that context,[76] specifically related to the right to adequate housing. However, it is also relevant in the context of all economic, social and cultural rights. Although those rights, including the right of access to food and housing, are limited by a provision of "progressive realization" under the South African Constitution, the case has shown that those rights may be considered justiciable, in the sense that the court may review the steps taken towards progressive realization. The Constitutional Court utilized the criteria of "reasonableness" to review government action or inaction on progressive realization of the rights within the limits of available resources. The Court concluded that the government programme, by leaving out provision for people "in desperate need", failed the test of reasonableness. This means that, in South Africa, while the courts do not define policy, they retain a power to review the "reasonableness" of policies.[77]

101. A monitoring mechanism to ensure the implementation and progressive realization of the right to food has also been set up. The South African Human Rights Commission is required, under the Constitution, to report annually to Parliament on the realization of economic and social rights. That acts as another mechanism for monitoring the implementation of those rights and provides a domestic reporting system. The Human Rights Commission has the power to request all relevant departments of State for information on each of the specific rights, including the right to food, which entails requesting information on the fulfilment of different rights from the various government departments and ministries, for example, the department responsible for agriculture and for health. The Commission also has the power to issue subpoenas to government departments if they fail to provide adequate information.

102. Questionnaires are sent out that are designed specifically to monitor and evaluate actions taken by the State and local governments on specific rights (food, health, education and so on) with respect to state obligations to respect, protect and fulfil each of the rights. The questionnaires request information not only on legislative measures, but also on policies, budgets, monitoring and outcome measures. Measures for particular vulnerable groups must also be identified. The process also now includes the use of indicators (e.g. nutrition, stunting and mortality rates) to assess the progressive realization of socio-economic rights and to be able to compare progress with future reports. A section on budget measures also seeks to collect data on the available resources that are allocated to fulfil different rights. Such elements aim to improve the measurement of progress and ensure the accountability of state departments in advancing economic, social and

cultural rights. The Commission then summarizes the responses of state agencies, analyses them and makes recommendations for better implementation of specific rights, such as the right to food.

103. Thus, the example of South Africa provides an exceptional case study for an examination of the effective implementation and the progressive realization of the right to food. Clearly, it would also be useful to include in the framework law envisioned above necessary provisions on water and nutrition.

VII. Concrete steps for local food security*

104. The most important thing that can be done to eliminate hunger and malnutrition is to put more emphasis on local food security and nutritional programmes.[78] International trade is not necessarily the answer,[79] nor is raising aggregate food production.[80] The problem in the modern world is not the lack of a sufficient quantity of food (FAO estimates that the world can already feed double the existing population), but rather the disparities in food availability and growing inequalities across the world. The remarkable developments in agriculture and nutrition science over the last 20 years have clearly so far failed to reduce malnourishment and malnutrition for the poorest populations.[78] A different model is needed, one that is focused on local-level food security.

105. This section proposes some elements that could be implemented immediately by Governments to meet their obligations to the right to food. Local-level food security means that concrete steps must be taken at the local level to fight the problems of hunger and malnutrition. Governments must implement policies at the national level, but must also ensure that they are understood and applied at the local level, through local government and community authorities. There are very many small steps that can be taken, at very low cost. The costs involved are certainly much less than the overall costs of malnourishment and malnutrition: for example, it has been calculated that malnutrition costs Pakistan 5 per cent of gross domestic product (GDP) and just iron deficiency in children costs Bangladesh 2 per cent of GDP.[81] The fact that the primary cause of hunger and malnutrition is poverty does not prevent efficient measures being taken that are not costly.

106. Local-level food security is about ensuring that all people have knowledge about nutrition and have access to sufficient and adequate food, either by earning adequate incomes or through additional access to small farms, parcels of land or vegetable gardens and local seed banks. The non-governmental organization Antenna suggests that government commitments at the international level must be reflected by commitments at the local level and action taken by local authorities. For example, India adopted a national nutrition policy in 1993, but it is not executed in most of the local states and no budgets are mandated to fight against the disastrous situation of child malnutrition. However, there are some examples of local state initiatives, for example, the State of Kerala, where the local government created mechanisms for access to land and establishment of fair trade stalls to control the price of food.[78]

107. A local strategy for food security must be developed with the explicit objective of fighting malnutrition, with a corresponding budget. Local authorities should draw up plans on local-level food security that include the following elements:

(a) *Nutritional education.* This is an indispensable element and is not costly. Nutritional education must recognize local food customs and be adapted to local food conditions. It must emphasize the importance of calories, as well as micronutrients, focusing especially on the importance of vitamins, minerals and iodine;

(b) *Universal school lunches.* Programmes of food distribution in schools and in crèches is one of the most efficient forms of fighting child malnutrition, in rural and urban areas. This can be accompanied by school gardens to diversify nutrients in school meals. The logistics of preparation and distribution must be decentralized to local municipalities to be most efficient. The cost of school meals is well below the end costs of malnutrition and is an effective encouragement for families in extreme poverty to send their children to school rather than out to work. A study by researchers at Cornell University in the United States also shows that more than three quarters of deaths related to malnutrition are caused by mild to moderate malnutrition, not by its acute form.

* This section is based on discussions on local food security with Denis Von des Weid, of the non-governmental organization Antenna, to whom the Special Rapporteur expresses his appreciation.

Nutritional programmes giving priority to children suffering from mild to moderate malnutrition will therefore have an extremely wide impact. This is also an idea suggested by McGovern, who writes:[10]

> "I would like to see America take the lead in working toward a school lunch program that embraces every child in the world. ... In Asia, Africa, and Latin America, wherever we have experimented with school lunches, we have seen school attendance double in a year or so; grades have also climbed. A daily lunch is the surest magnet for drawing children to school that anyone has yet devised. This is a very important fact because of the world's 300 million school-age children, 130 million are illiterate and not attending school";

(c) *Maternal breastfeeding*. It is vital that maternal breastfeeding is encouraged by authorities as the best form of challenging malnutrition in babies. This means that the 1981 World Health Organization (WHO) International Code of Marketing of Breast-milk Substitutes must be enforced. Some States already have a code in national legislation; this must be extended. Local authorities should ensure the dissemination of the international code, including all the recommendations for the protection and promotion of maternal breastfeeding;

(d) *Provision of family gardens*. Almost everywhere in the world a majority of families in extreme rural poverty could be granted access to a few square metres of land. In communes and urban municipalities, non-governmental organizations and community movements should demand that land be made available for the cultivation of family gardens. Such facilities already exist in many towns and rural communities; they should be extended to all. Both land and water must be available and the value of such micro-production is still dependent on certain conditions: access to basic tools, in some cases a minimum of training, but above all access to good-quality seeds suitable for local conditions. This means putting in place seed distribution banks and ensuring the sale of local seeds at low prices. For example, under the Barangay Integrated Development Approach to Nutrition Improvement, a rural community in the Philippines developed a food security strategy that was very successful and significantly improved nutrition at the household level;

(e) *Monitoring of food insecure groups*. The consumption of food in sufficient quantity and adequate quality to ensure adequate growth of babies and children, as well as women, elderly and other vulnerable groups, must be monitored at the local level (communities, municipalities, districts and so on) by the health and social welfare authorities;

(f) *Other elements*. This should include elements that relate to securing land titles, microcredit, local cooperatives and access to water. It should also clarify the question of the organization of the provision of food and water in case of natural disasters, ensuring ethnic, gender and religious non-discrimination.

108. Agricultural research has also tended to focus on crops and processing and patenting methods that do not favour local food security (including the WTO Agreement on Trade-Related Aspects of Intellectual Property). Those methods can result in the elimination of local forms of seed that support local food security. It is urgent that national research programmes focus on local food security and the development of local agricultural resources and small farms rather than focusing solely on agricultural exports. Research on local seeds and traditional plants must be conducted in ways that benefit local populations, including indigenous populations. Such research must also be supplemented by research on better forms of storage and other elements of importance to local food security.

109. International actors also have responsibilities if local food security is to work. This means, for example, that food aid must not be a substitute for local food production in situations where local capacity to produce still exists. There is also some evidence of a structural weakness amongst United Nations entities in the sense that such division of labour can result in a failure to treat hunger and malnutrition as an integrated problem. The five bodies that have key roles in the area, the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the World Food Programme, the Food and Agriculture Organization of the United Nations and the World Health Organization, tend to have their own projects, linked to their own speciality, which sometimes results in a very fragmented approach. Integration within broader policies of poverty eradication and institutions, including the World Bank and IMF, must also be made. It is vital that an integrated country strategy is agreed amongst those bodies that addresses both malnourishment and

malnutrition in a holistic way. The Special Rapporteur recognizes that some progress is beginning to be made on the issue through the Secretary-General's process of reform and the common country assessment and United Nations Development Assistance Framework mechanisms.

110. In the same way, national legislation based on a framework law that establishes the priority of local food security and the right to food should be developed. This would provide a holistic basis, on which various issues, ranging from food security, nutrition, food safety to access to water and social safety nets, could be addressed.

VIII. Conclusions and recommendations

111. The Special Rapporteur believes that the silent genocide of hunger is a crime against humanity, in a world richer than ever before that could already easily feed the global population. Martin Luther King hoped that one day the word "hunger", like other words of oppression, would disappear and could be taken out of the dictionary for ever.

112. Hunger and malnutrition still sentence millions of people to underdevelopment and death. Every seven seconds a child dies of the direct or indirect effects of hunger. Millions of others are born blind or crippled or mentally impaired. The possibilities for people and whole countries to fulfil their economic potential are irreparably damaged. The terrible dimension of human suffering, so often missing from formal descriptions of food insecurity, is the unbearable, nagging dread that tortures undernourished persons from the moment they wake up. How, during the day that lies ahead, will they be able to feed their family, provide nourishment for their children and feed themselves?

113. Like all human rights, the right to food is based on the responsibility of Governments to protect their people. The right to food requires that the State pass laws to make sure that the right to food is respected, protected and fulfilled. When the law is just, it can protect the weak.

114. Concrete steps must be taken to ensure that national legislation provides a framework that recognizes the State's obligations to respect, protect and fulfil the right to food of its people, in peace and in war. Setting benchmarks for food security and for water quality and quantity is vital to measure and monitor the progressive implementation of the right to food over time. International human rights law must be complemented by international humanitarian law that protects the right to food in situations of armed conflict. This must include the prohibition of starvation of civilians as a method of warfare and forced displacement, as well as respect for the rules on relief and humanitarian assistance, so that relief is not blocked, diverted or delayed. The right to food, along with other economic, social and cultural rights, must be treated as equal in status and implementation to civil and political rights.

115. The Special Rapporteur believes that the nutritional aspects of water must be a component of the right to food, as millions suffer from diseases carried in water that are easily eradicable. As water is also essential for life, everyone must have access to drinking water on equal terms and irrigation water should also be accessible for poor peasants who depend on their land to feed themselves. This should include several elements, including reducing inequality of access to water at the national and international levels, taking into account the particular problems of countries suffering from severe water shortages.

116. Water should be treated as a public good and be protected through appropriate public services. Raising public awareness at the national and international levels to promote the conservation of water, to limit over-consumption and to reduce losses, leakage, pollution and wastage of water is also fundamental. Ensuring better purification and storage and setting benchmarks for water quality would reduce the risk of disease and contribute immeasurably to the nutritional aspects of water as a component of the right to food.

117. The Special Rapporteur recommends that the nutritional aspects of water be addressed as part of the right to food and calls on Governments to ensure fair distribution of and access to adequate quantity and quality of water, free from many easily eradicable diseases.

118. International trade obligations must also be reviewed to ensure that they do not conflict with the right to food. The unfairness of the current regime must be revised and developing countries allowed special protection, as it is in those countries that food security remains a daily struggle. The new WTO negotiations

must take into account the suggestions of the developing countries and must consider the need to protect the right to food. Economic policy changes must not endanger life through malnutrition, but guarantee at least a basic minimum that respects at the very least the right to food and the right to life.

119. The Special Rapporteur strongly recommends that the decisive negotiations on agriculture and other issues currently under way at WTO take food security into particular account and ensure that trade rules do not conflict with international human rights law.

120. As far as structural adjustment programmes can increase social disparities and exclude many of the poorest of the poor households from access to minimum food requirements, the right to food should be a guiding principle in the process of the review of such programmes. Similarly, the right to food should be a guiding principle in poverty-related policies in the preparation of poverty reduction strategy papers.

121. In order to eliminate hunger and malnutrition, the Special Rapporteur recommends putting more emphasis on small-scale farming, local food security and nutritional programmes. Whatever the weakness of the situation in a State, there are measures for local food security that can be taken immediately at very low cost, including programmes for nutritional education, universal school lunches, encouraging maternal breastfeeding and the provision of family gardens or small parcels of land and other elements that relate to securing land titles, micro-credit, local cooperatives and access to water.

122. Action for local food security should also clarify the question of the organization of the provision of food and water in case of natural disasters, ensuring ethnic, gender and religious non-discrimination. Monitoring structures should also be put in place at the local level to monitor the consumption of food in sufficient quantity and high enough quality to ensure adequate growth of babies and children, as well as for women, the elderly and other vulnerable groups.

123. Stronger involvement of local authorities in delivering services and reaching food-insecure population groups should be encouraged. Decentralization means allocation of responsibility and budgets to local authorities, in accordance with the principle of subsidiarity.

124. Every Government should develop a national framework law conforming to the need to respect, protect and fulfil the right to food, recognizing obligations under international human rights and humanitarian law, in particular paragraph 29 of General Comment No. 12 of the Committee on Economic, Social and Cultural Rights. As recommended by the Third Expert Consultation on the Right to Food, held in Bonn, Germany, from 12 to 14 March 2001,[82] the strategy should make an inventory or checklist of issue areas that require national regulation, such as guaranteeing access to productive resources for the food-insecure and the vulnerable, including land tenure and access to water. In addition, a review of existing legislation should be made to assess whether it contradicts the obligations under the right to adequate food or lacks adequate implementation. Effective administrative and judicial remedies and recourse procedures should be implemented for everyone whose right to food is violated or neglected.

125. Governments should appoint focal points on the right to food in national administrations that should coordinate the work of relevant ministries (agriculture, finance, social welfare, health and land). As provided for in paragraph 29 of General Comment No. 12, Governments should develop indicators and set benchmarks to allow verification of the progress of establishing the right to food at the country level.

126. The Special Rapporteur recommends that States adopt an international code of conduct on the right to food, as voluntary guidelines aimed at achieving food security for all, as called for in objective 7.4 of the 1996 Rome Declaration on Food Security and World Food Summit Plan of Action. The drafting of such voluntary guidelines should be on the agenda of the follow-up meeting to the World Food Summit to be held in November 2001. In that respect, the 1997 International Code of Conduct on the Human Right to Adequate Food already drafted and approved by many non-governmental organizations should be taken as an excellent starting point. The Code should be further developed by FAO and the Office of the United Nations High Commissioner for Human Rights, in collaboration with other relevant bodies and inter-agency arrangements.

127. The Special Rapporteur recommends that international organizations, including FAO, WFP, IFAD and others, as well as the bilateral and multilateral development cooperation agencies, adopt a rights-

based approach in their work of implementing the right to food as set out in paragraphs 40 and 41 of General Comment No. 12.

128. Finally, the Special Rapporteur urges States to reconsider the commitments they made at the 1995 World Summit for Social Development on the right to food and at the 1996 World Food Summit to halve the number of undernourished no later than 2015. At a time when some people are already concerned that that goal will not be met, it is urgent that States rethink national and international policies to ensure that it is indeed achieved.

129. The silent, daily genocide of hunger has to be stopped.

Notes

[1] E/CN.4/2001/53.

[2] FAO, *The State of Food Insecurity in the World 2000* (Rome, 2001).

[3] WFP, *World Hunger Map*, (Geneva, 2001).

[4] Antenna, "Malnutrition: un massacre silencieux" (unpublished paper) (Geneva, 2000).

[5] Iron and zinc are vital for the development of mental abilities. Micronutrients contain other substances too, such as enzymes.

[6] See, for example, "Ending Malnutrition by 2020: an Agenda for Change in the Millennium", final report to the Subcommittee on Nutrition of the Administrative Committee on Coordination by the Commission on the Nutrition Challenges of the 21st Century (Geneva, 2000), p. 53 on HIV/AIDS.

[7] E/CN.4/Sub.2/1999/12.

[8] See Régis Debray and Jean Ziegler, *Il s'agit de ne pas se rendre*, (Paris, Éditions Arléa, 1994).

[9] See "Ending Malnutrition ...", op. cit.

[10] George McGovern, *The Third Freedom: Ending Hunger in Our Time* (New York, Simon and Schuster, 2001).

[11] Richard Jolly, speech made at the Millennium Summit of the United Nations in September 2000.

[12] Preparatory analyses by FAO for the World Food Summit: Five Years Later, to be held in November 2001, argue that that goal to reduce hunger will not be met.

[13] E/CN.4/2001/148.

[14] Article 24, paragraph 2 (c), calls for appropriate measures to combat disease and malnutrition, including through the provision of nutritious foods and drinking water.

[15] See "The Four Freedoms" speech by Franklin Delano Roosevelt, made on 6 January 1941 to the United States Congress.

[16] Juan Somavia, Director-General, ILO, "Reducing the decent work deficit", report to the 89th International Conference on Decent Work, held in Geneva in June 2001. See also "Social Development Summit +5: Advancing the Social Development Agenda" (DPI/2096) available on the Internet at http://www.un.org/esa/socdev/geneva2000/news/presskit.htm

[17] "Calorie" is a term used in physics; it is the unit used to measure the amount of energy consumed by the body. For details of how this is measured, see Jean-Pierre Girard, *L'Alimentation* (Geneva, Georg, 1991).

[18] E/C.12/1999/5.

[19] Ibid., para. 15.

[20] This is explained in General Comment No. 3 of the Committee on Economic, Social and Cultural Rights, which provides examples of minimum state obligations and puts some limits on the concept of progressive realization.

[21] See E/CN.4/2001/62/Add.2.

[22] Anyone can write to the Special Rapporteur to report violations: Jean Ziegler, Special Rapporteur on the right to food, Office of the United Nations High Commissioner for Human Rights, Palais des Nations, CH-1211 Geneva 10, Switzerland.

[23] Statement made by ICRC to the Commission on Human Rights at its fifty-seventh session on agenda item 10.

[24] Ludwig Feuerbach, *Manifestes philosophiques*, translated into French by Louis Althusser (Paris, Presses universitaires de France, 1960), pp. 57 and 58.

[25] See, in particular, the origin of this theory put forward by Sergio Vieira de Mello in his inaugural lecture at the Graduate Institute of International Studies in Geneva on 2 November 2000, entitled "Consciousness of the world: the United Nations faced with the irrational in history".

[26] See CD/1478.

[27] A/CONF.183/9.

[28] First Additional Protocol to the Geneva Convention, art. 54, para. 1, and second Additional Protocol, art. 14.

[29] First Additional Protocol, art. 54, para. 2, and second Additional Protocol, art. 14.

[30] While there is no equivalent categorization of starvation of civilians as a war crime in non-international armed

conflict under the Rome Statute, it may be said that such an act constitutes a serious violation of international humanitarian law when committed in internal armed conflict as well.

[31] See "Serb charged over role in Sarajevo siege", *Independent* (London), 2 March 1996.

[32] United Nations, *Treaty Series*, vol. 75, No. 973, art. 49.

[33] Second Additional Protocol, art. 17.

[34] For international armed conflict, see art. 8, paras. 2 (a) (vii) and (b) (viii) of the Statute; for non-international armed conflict, see art. 8, para. 2 (e) (viii).

[35] Press conference given in Paris on 18 January 1999, quoted in *Libération* (Paris), "The United Nations is guilty of genocide in Iraq".

[36] E/CN.4/Sub.2/2000/33, paras. 59-73.

[37] Ricardo Petrella, *Le manifeste de l'eau: pour un contrat mondial* (Lausanne, Éditions Page deux, 1999), pp. 32 and 33.

[38] See Guy Le Moigne and Pierre-Frédéric Ténière-Buchot, "Les grands enjeux liés à la maîtrise de l'eau", in "De l'eau pour demain", special issue of *Revue française de géoéconomie*, No. 4 (winter 1997/98), pp. 37-46.

[39] G. O. P. Obasi, Secretary-General, World Meteorological Organization, "Changements climatiques et gestion des ressources en eau douce" in *Water: the World's Common Heritage — Proceedings of the First World Water Forum, Marrakesh, Morocco, 21-22 March 1997* (Oxford, Elsevier Science, 1997), pp. 112 and 113.

[40] Ismail Serageldin, "The water bomb", *Guardian* (London), 9 April 1995.

[41] Ricardo Petrella, op cit., p. 43.

[42] See Maude Barlow, "Blue gold: the global water crisis and the commodification of the world's water supply", International Forum on Globalization, June 1999; and Gil Yaron, "The final frontier: a working paper on the big 10 global water corporations and the privatization and corporatization of the world's last public resource", Polaris Institute and the Council of Canadians, 15 March 2000.

[43] Gil Yaron, op. cit.

[44] Ricardo Petrella, op. cit., p. 25.

[45] Maude Barlow "Desperate Bolivians fought street battles to halt a water-for-profit scheme: the World Bank must realize water is a basic human right", *Globe and Mail* (Toronto), 9 May 2000.

[46] Ricardo Petrella, op. cit., p. 21.

[47] Michael Acreman, "Principles of water management for people and the environment", in *Water and Population Dynamics: Case Studies and Policy Implications* (Washington, American Association for the Advancement of Science, 1998), p. 38.

[48] The data on the Niger are based on the report of the Sector Meeting on Water and Sanitation, held in Niamey from 29 to 31 May 2001, Ministry of Water Resources of Niger (in French).

[49] International Human Dimensions Programme on Global Environmental Change, cited in Caroline Moser and others, "Livelihood security, human rights and sustainable development", background concept paper prepared for the Workshop on Human Rights, Assets and Livelihood Security, and Sustainable Development, held in London, on 19 and 20 June 2001.

[50] A French version of the article appeared in *Courrier international* (Paris), No. 315, 14-20 November 1996.

[51] John Madeley, "Trade and hunger: an overview of case studies on the impact of trade liberalization on food security", *Globala Studier No. 4* (Stockholm, Church of Sweden, Diakonia, Forum Syd, the Swedish Society for Nature Conservation and the Programme of Global Studies, 2000).

[52] Of course the problems are different for net food importing countries that cannot grow sufficient food. For this reason, the Decision on Measures concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food Importing Countries (Marrakesh Decision) was taken, but it has had little concrete effect so far (see TD/B/COM.1/EM.11/2 and Corr.1).

[53] Often government monopolies are simply replaced by monopolistic private companies or traders, who offer poorer prices to farmers and charge higher prices to consumers. See S. Way and J. Chileshe, "Trade liberalisation and the impact on poverty: Zambia case study", in Oxfam/Institute of Development Studies, University of Sussex, *Liberalisation and Poverty* (Oxford, Oxfam, 1999).

[54] IMF, "External evaluation of the ESAF: report by a group of independent experts, June 1998" (Washington, D.C., 1998).

[55] Statistics from Action Aid, Brazil, available on the Internet at http://www.actionaid.org.br/e/issues/ifood.htm

[56] United States Department of State, "Human rights in Brazil", citing a report by the Catholic Church Pastoral Land Commission. Document available on the Internet at http://www.state.gov/g/drl/rls/hrrpt/2000/wha/index.cfm?docid=724

[57] Peter M. Rosset, "The multiple functions and benefits of small farm agriculture in the context of global trade negotiations", *Foodfirst Policy Brief No. 4*. Document

available on the Internet at http://www.foodfirst.org/pubs/policybs/pb4.html

[58] See TD/B/COM.1/EM.11/2 and Corr.1.

[59] In the case of Zambia, for example, import tariffs were reduced under structural adjustment to well below their boundary levels under WTO.

[60] It is also important to point out, however, that a cut in domestic support and export subsidies on food envisaged under agricultural trade reform may have a negative impact on developing countries that are net food importers (although food aid will generally be exempted). This is because there will be upward pressure on world agricultural prices of basic foodstuffs at the same time as price concessions are taken away (see TD/B/COM.1/EM.11/2 and Corr.1).

[61] See, for example, C. Dommen, "Raising human rights concerns in the World Trade Organization: actors, processes and possible strategies" *Human Rights Quarterly* (forthcoming). Another difficult issue concerns strong developing country resistance to United States proposals to include trade and labour rights as part of the WTO agreements, but this matter is not treated here as this section focuses only on the impact of the Agreement on Agriculture on liberalization on food security (although this has often involved deregulation and removal of existing social protections, such as labour rights, under structural adjustment provisions).

[62] WTO, "GATS: fact and fiction", in *The WTO is not after your water* (Geneva, 2001). Document available on the Internet at http://www.wto.org/english/tratop_e/serv_e/gats_factfiction_e.htm

[63] G/AG/NG/W/101, para. 29. Document available on the Internet at http://www.wto.org/english/tratop_e/agric_e/negoti_e.htm#proposals

[64] Ibid., paras. 33 and 36.

[65] See G/AG/NG/W/13.

[66] Duncan Green and Shishir Priyadarshi, "Proposal for a 'Development Box' in the WTO Agreement on Agriculture", *CAFOD Policy Paper* (June 2001). Document available on the Internet at http://www.cafod.org.uk/policy/devbox.htm

[67] Dani Rodrik, "The global governance of trade as if development really mattered" (Harvard University, 2001), paper prepared for UNDP.

[68] The World Bank argues that pre-existing inequality in a country affects the way in which the benefits of growth are distributed. When inequality in a country is very high, then growth will benefit the rich and not the poor, as growth in itself does nothing to reduce inequality. Reducing inequality requires the State to engage in active measures of redistribution, such as land reform — a classic form of redistribution that can be effective. See World Bank, *World Development Report 2000/2001: Attacking Poverty* (Oxford University Press, 2001), p. 55.

[69] "La liberté du faible est la gloire du fort".

[70] See "The right to food in national constitutions", in FAO, *The right to food in theory and practice*, (FAO, Rome, 1998), pp. 42 and 43.

[71] Margret Vidar, "The right to food: the role, responsibilities and obligations of the FAO", in R. Berthouzoz and others, *Faim de vivre: la multidimensionnalité du droit à l'alimentation* (Berne/Fribourg, 2000).

[72] Martin Wolpold-Bosein "Some proposals for a framework legislation at the national level: lessons learned from the perspective of a non-governmental organization", paper presented at the Third Consultation on the Right to Food, held in Bonn, Germany, from 12 to 14 March 2001.

[73] A brief summary of the broad outlines of the International Code of Conduct by the Executive Director of FIAN may be found in a report on the right to food by the United Nations High Commissioner for Human Rights (E/CN.4/1998/21, para. 18).

[74] See E/CN.4/2001/53.

[75] Section 9. Sections 10 and 11, on the rights to human dignity and life, are indirectly relevant because a substantive interpretation of those rights would extend to protect the same interests as rights to food.

[76] *Government of the Republic of South Africa v. Irene Grootboom and others (CCT 11/00)*. For a comprehensive overview of the debate, see S. Liebenberg "The justiciability of socio-economic rights: the South African experience", draft presented at the Workshop on the Justiciability of Economic, Social and Optional Protocol to the Covenant on Economic, Social and Cultural Rights, held in Geneva on 5 and 6 February 2001.

[77] S. Liebenberg, op. cit., p. 20. Liebenberg argues that this shows that while the legislature and executive have a wide discretion to formulate laws and policies that have an impact on socio-economic rights, the courts under the South African Constitution retain the ultimate discretion to review the reasonableness of those measures. In that way a relationship of accountability, transparency and responsiveness is fostered between the judiciary, the legislative and the executive.

[78] Antenna, "Securité alimentaire locale" (2001), unpublished paper.

[79] A recent report entitled "Trade and hunger" claims that international trade-based food security is more mirage

than fact for the poorest in developing countries. See John Madeley, op. cit.

[80] As in the example of Brazil mentioned above (para. 75). World agricultural production has been increasing steadily and outstripping population growth by a widening margin since the 1960s. See FAO, "Salient trends in world agricultural production, demand and trade and food security", background paper prepared for the Symposium on Agriculture, Trade and Food Security, held in Geneva on 23 and 24 September 1999.

[81] "Ending Malnutrition ...", op. cit., p. 43.

[82] E/CN.4/2001/148, paras. 21-45.